HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 9, 2013
83rd Legislature, Number 47
The House convenes at 10 a.m.

Six bills and one proposed constitutional amendment are on the daily calendar for second-reading consideration today. They are analyzed in today's Daily Floor Report and are listed on the following page.

The following House committees had public hearings scheduled for 8 a.m.: Natural Resources in Room E2.010 and Transportation in Room E2.012.

The Public Education Committee has a public hearing scheduled upon adjournment in Room E2.036. The following House committees have public hearings scheduled for 10:30 a.m. or on adjournment: Criminal Jurisprudence in Room E2.016; Environmental Regulation in Room E1.026; and Human Services in Room E2.030. The Licensing and Administrative Procedures Committee has a public hearing scheduled for 11 a.m. or on adjournment in Room E1.010. The Business and Industry Committee has a public hearing scheduled for 1:30 p.m. or on adjournment in Room E2.014. The following House committees have public hearings scheduled for 2 p.m. or on adjournment: Insurance in Room E2.026; Select Committee on Transparency in State Agency Operations in JHR 140; and Ways and Means in Room E2.028.

Bill Callegari
Chairman
83(R) – 47

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, April 9, 2013
83rd Legislature, Number 47

SUBJECT: Constitutionally allowing governor to retain authority when outside state

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira

0 nays

3 absent — Hilderbran, Smithee, Sylvester Turner

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Christopher Burnett, Office of the Governor)

BACKGROUND: Tex. Const., Art. 4, sec. 16(c) specifies that when the governor is absent from Texas the lieutenant governor shall exercise the powers of the governor until the governor returns. The lieutenant governor also assumes the governor's office when the governor is temporarily unable or disqualified to serve or when impeached. Art. 4, sec. 16(d) provides for the lieutenant governor to become governor for the remainder of the governor's term should the governor refuse to serve or become unable to serve.

Art. 4, sec. 17 provides for the temporary transfer of the governor's powers to the president pro tempore of the Senate if the lieutenant governor, while acting as governor, is absent from the state or is otherwise unable or not qualified to serve as governor.

DIGEST: HJR 71 would amend Tex. Const., Art. 4, sec. 16(c) to provide for the temporary transfer of authority from the governor to the lieutenant governor when the governor was "unavailable as provided by law," rather than when absent from the state. The proposed amendment also would specify that the lieutenant governor would exercise the governor's powers until the governor was "available." HJR 71 also would specify that in the event the Legislature did not enact a statute providing a different

definition, "unavailable" would mean absent from the state.

HJR 71 would also amend the language of Art. 4, sec. 17 to transfer the governor's powers to the president pro tempore of the Senate when the lieutenant governor was "unavailable as provided by law," rather than when absent from the state. The proposed amendment would define "unavailable" to mean absent from the state unless the Legislature provided a different definition.

The amendment would specify that the lieutenant governor would serve the remainder of the former governor's term provided by Art. 4, sec. 16(d) if the governor's inability to serve were permanent.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: “The constitutional amendment providing that the governor, and the lieutenant governor when acting as governor, retain executive authority unless unavailable as provided by law."

SUPPORTERS SAY:

HRJ 71 would propose a constitutional amendment that would allow the Legislature to enact laws determining when the governor was considered "unavailable as provided by law." The Legislature should have this ability because it allows for flexibility and for keeping the definition of "unavailable" up to date. This is appropriate because modern electronic communication technologies make it easy for the governor to keep in touch and make decisions even when outside of Texas.

OPPONENTS SAY:

HRJ 71 inappropriately would permit the governor to exercise authority when he or she was not physically present in Texas. Because the governor should not have this authority when outside the state, the specific language in the Constitution requiring the governor to transfer his or her powers when absent from Texas should remain unchanged.

NOTES:

HB 829 by S. Thompson, the enabling legislation for HJR 71, which would provide a definition of when the governor was considered unavailable, has been placed on today's calendar.

The identical companion bill, SJR 122 by Huffman, was reported favorably by the Senate Committee on State Affairs on March 26.

SUBJECT: Enhanced penalties for counterfeit airbag offenses

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Lavender, Pickett

0 nays

4 absent — Y. Davis, Harper-Brown, McClendon, Riddle

WITNESSES: For — Bo Gilbert , USAA *(Registered, but did not testify*: Mary Calcote, Honda; Shanna Igo, Texas Municipal League)

Against — None

On — (*Registered, but did not testify:* William Harbeson, Texas Department of Motor Vehicles)

BACKGROUND: Transportation Code, sec. 547.614 makes certain actions involving counterfeit airbags crimes. It is an offense to:

- knowingly install a counterfeit airbag or claim to install an airbag and fail to do so;
- make or sell counterfeit airbags;
- intentionally alter a non-counterfeit airbag so it no longer conforms to federal safety regulations;
- claim that an installed counterfeit airbag is not counterfeit; or
- cause another person to commit these actions or assist another person in the actions.

These offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of $4,000). Second and subsequent offenses are third-degree felonies (two to 10 years in prison and an optional fine of up to $10,000). Offenses that result in bodily injury are second-degree felonies (two to 20 years in prison and an optional fine of up to $10,000).

DIGEST: HB 38 would increase the penalty for first-time offenses relating to counterfeit airbags from a class A misdemeanor to a state-jail felony (180

days to two years in a state jail and an optional fine of up to $10,000).

The bill would make counterfeit airbag offenses that resulted in the death of a person a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000).

The bill would take effect September 1, 2013, and apply only to offenses committed on or after that date.

SUPPORTERS SAY:

HB 38 is necessary to address the increasing danger of counterfeit airbags sold to repair shops and consumers and installed in Texans' cars and trucks.

In 2012, the National Highway Transportation Safety Administration (NHTSA) issued a consumer safety advisory warning to consumers about the dangers of counterfeit airbags used as replacement parts after a crash. The agency reported the availability of counterfeit bags for at least 75 makes and models of vehicles. Sometimes counterfeit bags do not deploy, and sometimes when they do the bags expel metal shrapnel or other material. This creates a high risk of bodily injury or death from both a crash and the counterfeit airbag itself.

While it is a crime in Texas to install, make, or sell counterfeit airbags, the penalties are not severe enough to deter and punish these offenses. First offenses are class A misdemeanors, which is not in line with the harm that can be caused. Misdemeanors carry only small fines and no potential time in state incarceration facilities. Increasing this penalty to a state jail felony would appropriately allow incarceration in the state system for up to two years, instead of 180 days in a county jail, and fines of up to $10,000, rather than $4,000. The state jail felony was created for lower-level but serious crimes, making it a good fit for these first offenses when they do not cause injury but nevertheless endanger lives through dishonest business practices.

Currently, counterfeit airbag offenses that result in bodily injury are punished as second-degree felonies, but there is not a more severe punishment if death occurs. HB 38 would rectify this by creating a first-degree offense in cases of death, which would align counterfeit airbag crimes with other crimes that result in death. For example, the penalty for certain types of arson is a first-degree felony if bodily injury or death occurs.

Given that those dealing in counterfeit airbags know that the bags are critical safety equipment central to preventing death in a crash, a first-degree felony punishment is warranted if death occurs. Those dealing in counterfeit airbags know they are putting lives at risk, even if they did not intend to kill, and should be punished appropriately.

HB 38 would not overburden the state's criminal justice resources. The bill's fiscal note reports no significant impact on the programs and workload of state correctional agencies or on demand for state agency resources. In fiscal 2012, fewer than 10 people were arrested, placed on probation, or admitted to a state correctional facility for airbag offenses, according to the fiscal note. Although these offenses may have been relatively few in number in the past, they pose an increasing threat, and it is appropriate to use the state's resources to combat them.

OPPONENTS SAY:

HB 38 is unnecessary because current law properly punishes counterfeit airbag crimes. Enhancing these offenses from a misdemeanor to a felony would be an unwarranted increase for first offenses that do not cause bodily injury, though they may fall along the lines of dishonest business practices. These cases are best dealt with as misdemeanors so state resources can be used for other crimes, especially those involving violent offenders. Even small increases in demand on state correctional facilities can add up to increased costs to the state.

Creating a new first-degree felony for counterfeit airbag offenses resulting in death would inappropriately put these crimes on par with other crimes, including certain types of murder, and would punish them more harshly than manslaughter or some types of sexual assault, which are second-degree felonies. In general, first-degree offenses, including arson, require that the crimes be committed intentionally or knowingly, standards not applied to all counterfeit airbag offenses. HB 38 could result in a life sentence for an unintentional death. Counterfeit airbag offenses involving death would continue to be adequately handled by the current second-degree felony punishment, which can carry up to 20 years in prison.

SUBJECT: Sunset review of occupational licensing regulation

COMMITTEE: Government Efficiency and Reform — favorable, without amendment

VOTE: 7 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner, Vo

0 nays

WITNESSES: For — Vikrant Reddy, Texas Public Policy Foundation; (*Registered, but did not testify:* Kathy Barber, National Federation of Independent Business; John Colyandro, Texas Conservative Coalition; David Mintz, Texas Apartment Association; Hector Uribe, Texas Independent Roofing Contractors Association, U.S. Hispanic Contractors Association, and Hispanic Contractors Association de Tejas)

Against — (*Registered, but did not testify:* Trish Conradt, Coalition for Nurses in Advanced Practice; Michael Cunningham, Texas State Building and Construction Trades Council)

DIGEST: HB 86 would require the Texas Sunset Commission to use certain criteria when conducting a Sunset review of an agency that licensed an occupation or profession and would allow a lawmaker to submit for review and analysis any proposed legislation that would create a new or significantly modify an existing occupational licensing program.

New review criteria. HB 86 would require the Sunset Commission, in assessing an agency that licensed an occupation or profession, to consider:

- whether the licensing program served a meaningful, defined public interest and provided the least restrictive regulation to do so;
- the extent to which the objective of the occupational license and regulation could be accomplished through market forces, private or industry certification and accreditation, or enforcement of other law;
- the extent to which licensing criteria, if applicable, ensured that applicants had occupational skill sets or competencies that aligned with a public interest and the impact the criteria had on applicants, especially those with moderate or low incomes seeking to enter the

occupation; and
- the impact of the regulation, including the extent to which it stimulated or restricted competition and affected consumer choice and the cost of services.

Preview of proposed legislation. HB 86 also would allow legislators to request that the commission review and analyze proposed legislation that would create an occupational licensing program or significantly amend an existing one. The request would have to be submitted by December 31 of an odd-numbered year. The commission's chair could deny a request on the recommendation of the executive director.

In analyzing legislation that proposed creating an occupational licensing program, the commission would determine whether:

- unregulated practice of the occupation was inconsistent with the public interest;
- the public could reasonably be expected to benefit from an assurance of initial and continuing professional skills or competencies; and
- the public could be more effectively protected by means other than state regulation.

"Public interest" would be defined as protection from a present and recognizable harm to the public health, safety, or welfare, not including speculative threats or other non-demonstrable menaces. The term "welfare" would include the financial health of the public when the absence of governmental regulation unreasonably increased risk and liability to broad classes of consumers.

A report reviewing and analyzing legislation that proposed regulating an occupation would have to be submitted to the Legislature before the start of the next legislative session with the commission's findings on the need for and the type of regulation recommended. A report on proposed legislation that would amend an existing occupational licensing program would have to be submitted before the start of the next session with the commission's findings on the need for the legislation.

The bill would take effect September 1, 2013.

SUPPORTERS

HB 86 would help rein in the state's extensive occupational licensing

SAY:

requirements. Texas currently regulates more than 500 types of occupations. The Texas Department of Licensing and Regulation administers 29 of these occupations, from auctioneers to hair shampooers, while others are regulated by a long list of agencies and boards. All told, nearly one-third of the Texas work force works in a business or occupation regulated by the state.

HB 86 would pave the way for a reduction in these regulations by incorporating new criteria for evaluating occupational licensing during Sunset review and by enabling lawmakers to request review of proposed legislation – so-called "sunrise review" – on new licensing programs or major changes to existing ones. Similar approaches in other states have provided a check on the growth of occupational licensing.

Reducing unnecessary occupational licensing programs would mean fewer obstacles to new entrants to a profession. This would benefit the young and those with less education or low or moderate incomes. The average licensee in Texas pays $304 in fees and must complete 326 days of training and two exams before qualifying for a license. Ex-offenders would gain from decreasing the burden of occupational licensing because agencies frequently bar those with criminal records, even for nonviolent crimes or crimes that occurred many years ago. High barriers to entry also stifle innovation because they limit participation from new professionals who otherwise might introduce new ideas and practices.

Many of the same functions performed by occupational regulation — upholding a standard of quality for professionals, providing consumers with information, and disciplining bad actors — could be performed through other means. Statewide and national industry associations frequently provide accreditation and opportunities for continuing education. Consumers may easily find information about the quality of goods and services from online and other sources. If consumers have been defrauded they have recourse through the courts and a number of laws that safeguard the public, such as the Texas Deceptive Trade Practices Act.

Some professions regulated in Texas are not regulated in other states and yet studies have found no significant gap in the quality of work. Studies have shown, however, that professionals benefit from occupational licenses by earning 10 percent to 12 percent more than their unlicensed counterparts, a difference passed on to consumers in higher prices. The fees agencies charge licensees also are passed on to consumers.

HB 86 would not require lawmakers to seek reviews before proposing legislation related to occupational licensing, but merely would enable them to ask the Sunset Advisory Commission to evaluate prospective legislation. HB 86 also would refocus Sunset reviews on ensuring that occupational licensing programs did not serve just the interests of the regulated industry but upheld the public health, safety, and welfare.

OPPONENTS SAY:

HB 86 is unnecessary because the Sunset Commission already adequately reviews occupational licensing programs and has a statutory duty in Government Code, ch. 325 to recommend abolishing or continuing an agency's functions, including licensing programs. The state should err on the side of caution when the public's safety and welfare are at stake. Legislators should consider reforms of occupational licensing with the aim of strengthening and preserving, rather than dismantling, the regulatory structure.

Occupational licensing gives consumers a trustworthy standard of quality and provides the public a level of protection unmatched by industry certifications and accreditations. Agencies can take enforcement action against offenders with cease-and-desist orders, fines, and other sanctions, giving the state the power to establish serious deterrents against harmful professional negligence. Occupational licenses also give agencies the power to conduct comprehensive criminal records searches, defending citizens from dangerous or fraudulent actors.

Alternative licensing and accreditation programs may not be feasible for every industry. Some do not have organizations with a uniform standard for licensing or certification, forcing consumers to sort through a patchwork of standards and information. With state licensing, agencies seeking to protect the public can gather information about competing standards and accreditations and choose those that provide the highest level of assurance of practitioner competence.

Curtailing occupational licenses would be unfair to those investing time and money to pursue professional qualifications through education, on-the-job training, and examinations. Past and present practitioners of many of these occupations have met a high standard of proficiency. New entrants not held to these same standards could fall below consumers' expectations.

OTHER OPPONENTS SAY:

HB 86 would not go far enough. The bill should require all new proposed occupational licensing programs and any significant changes to those programs to go through a preview or "sunrise review," rather than having this only as an option. Members of the Legislature interested in introducing or amending occupational regulations could be reluctant or otherwise fail to request an evaluation of prospective legislation.

Also, it could be infeasible for some lawmakers, such as those newly elected, to submit a request for a report from the Sunset Commission by December 31of an odd-numbered year. Reports could be outdated by the time they were produced for the legislative session.

SUBJECT: Adjusting requirements for Emerging Technology Fund

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 7 ayes — J. Davis, Vo, Bell, Y. Davis, Murphy, Rodriguez, Workman

0 nays

2 absent — Isaac, Perez

WITNESSES: For — (*Registered, but did not testify*: Carlton Schwab, Texas Economic Development Council)

Against — None

BACKGROUND: HB 2457 by J. Davis, enacted in 2011 by the 82nd Legislature, amended the requirements for the governor's annual report on the Emerging Technology Fund. The bill amended Government Code, sec. 490.005(b) to require the report to contain the total number of jobs created by each project receiving funding and an analysis of the number of jobs created by each project receiving funding.

HB 2457 also amended Government Code, sec. 490.056 to require that each principal of an entity recommended for an award from the fund submit to criminal history background checks.

Government Code, sec. 490.057 requires the confidential handling of sensitive information, such as marketing plans or trade secrets, collected by the fund's advisory committee on entities being considered for, receiving, or having received an award.

DIGEST: HB 468 would require the governor's annual report on the Emerging Technology Fund to include the total number of jobs created by all of the funded projects rather than the number of jobs created by each individual project. The analysis in the report also would focus on the total number of jobs created by all of the funded projects.

The bill would limit the requirement for background checks to the

principals of entities recommended for an award from money set aside to incentivize collaboration on commercialization projects between companies and universities located in the state. These background checks would remain in effect for five years, regardless of how many funding applications these entities made during that period.

The confidentiality protections on sensitive information provided by entities would be expanded to include entities that applied for funding but were not considered for an award.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 468 would make small, necessary adjustments to the law governing the Emerging Technology Fund based on feedback about difficulties in implementing some of its provisions.

Current law, by requiring each start-up company receiving awards to reveal the number of jobs it has created, inadvertently gives crucial information about the company to its direct competitors. This allows competitors to gain the advantage of knowing whether the company is shrinking or growing and to monitor and track its progress. Providing this information risks harming the return to taxpayers on funds awarded. HB 468 would modify this requirement to make public overall numbers on job creation without specifying how many were created by any single company.

HB 2457 was enacted after the fund had entered into contracts with 133 companies. These contracts did not require companies to disclose their job numbers. HB 468 would correct this problem by requiring the aggregate number of jobs created across all projects to be reported publicly.

Expensive background checks are currently required whenever funds are awarded. HB 468 appropriately would apply this requirement only to commercialization incentive awards, which involve start-up companies that may previously have been unknown players. In addition, because these companies pair with institutions of higher learning, certain university personnel, such as university presidents, are required under current law to undergo repeated background checks, which is burdensome to the people involved and costly to the state. The bill would solve this problem by allowing a single background check to remain effective for five years, regardless of how many times a business and its university counterpart

applied for funding.

The fund currently ensures the confidentiality of certain information, such as trade secrets, for businesses being considered for or receiving funds. However, a loophole exists in that businesses that have applied but have not been considered for funding do not enjoy such protection. HB 468 would protect the sensitive information of businesses that have merely applied for an Emerging Technology Fund award.

OPPONENTS SAY:

HB 468 would make the Emerging Technology Fund less transparent by no longer requiring the reporting of annual job numbers for each project, which currently assists stakeholders in monitoring the fund's performance. Lawmakers who supported the creation of the fund have a special obligation to ensure that it works and that the public sees that it works. Taxpayers have invested about $200 million in Emerging Technology Fund companies and have a right to see what they are getting in return, including job numbers. Companies that do not want to disclose their job numbers to taxpayers should not accept taxpayer money.

SUBJECT: Requiring insurers to refund unearned premiums within 15 business days

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Smithee, Eiland, G. Bonnen, Creighton, Morrison, Muñoz, Sheets, Taylor, C. Turner

0 nays

WITNESSES: For — (*Registered, but did not testify:* Amanda Fredriksen, AARP; Lee Loftis, Independent Insurance Agents of Texas; Alex Winslow, Texas Watch)

Against — None

On — (*Registered, but did not testify:* Mark Worman, Texas Department of Insurance)

BACKGROUND: Insurance Code, sec. 558.002, requires an insurer to promptly refund the remaining portion of a premium reserve ("unearned premium") to the policyholder if an insurance policy is cancelled or terminated before the end of its term.

DIGEST: HB 1902 would require insurers to refund unearned premiums from cancelled or terminated residential property and personal automobile insurance policies within 15 business days of the effective cancellation date. This would apply to policies issued or renewed on or after September 1, 2013.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: The Insurance Code does not specify what constitutes a "prompt" refund of an unearned premium, putting insurers and policyholders at odds. Since 2010, the Texas Department of Insurance (TDI) has received more than 400 complaints each year from policyholders about the length of time it takes to receive a refund. By setting a specific time frame, this bill would put insurers, policyholders, and the TDI on the same page. Insurers could

develop procedures to ensure compliance, policyholders would know when to expect their refunds, and the TDI could quickly determine if a violation occurred.

OPPONENTS SAY:

HB 1902 would not allow enough time to handle unearned premium refunds from insolvent insurance companies. All insurance policies are effectively cancelled when an insurance company files for bankruptcy, resulting in numerous policies eligible for refunds of unearned premiums. Entities that handle claims from insolvent companies need more than 15 business days from the effective cancellation date to receive the necessary information and process the refunds.

NOTES:

The companion bill, SB 698 by Carona, passed the Senate by a vote of 31-0 on March 21.

SUBJECT: Physician visits for foster youth prescribed psychotropic medication

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Raymond, N. Gonzalez, Fallon, Klick, Rose, Sanford, Scott Turner, Zerwas

0 nays

1 absent — Naishtat

WITNESSES: For — Katherine Barillas, One Voice Texas; Robin Chandler, Disability Rights Texas; Duncan Cormie, Texas Network of Youth Services; Ashley Harris, Texans Care for Children; Leroy Hodge, Child Advocates of Fort Bend; Judy Powell, Parent Guidance Center; Erin Smith, DePelchin Children's Center; Lee Spiller, Citizens Commission on Human Rights; (*Registered, but did not testify:* Laura Blanke, Texas Pediatric Society; Sarah Crockett, Texas Association for Infant Mental Health; Melissa Davis, National Association of Social Workers - Texas Chapter; Joe Garcia, Companion DX; Nancy Holman, Texas Alliance of Child and Family Services; Brandy Knudson, Child Advocates of Fort Bend; Diana Martinez, TexProtects; John R. Pitts, Legacy Health Services; Michelle Romero, Texas Medical Association; Gyl Switzer, Mental Health America of Greater Houston; Eric Woomer, Federation of Texas Psychiatry)

Against — None

On — Katharine Ligon, Center for Public Policy Priorities; (*Registered, but did not testify:* Elizabeth Kromrei, Department of Family and Protective Services; Jean Shaw, Department of Family and Protective Services; Lydia Villa)

BACKGROUND: A foster child is a child who is in the managing conservatorship of the Department of Family and Protective Services (DFPS).

Family Code, sec. 261.111 defines "psychotropic drug" to mean a substance used in the diagnosis, treatment, or prevention of a disease or as a component of a medication and intended to have an altering effect on perception, emotion, or behavior.

DIGEST:

HB 838 would require the person authorized to make medical decisions for a foster child prescribed a psychotropic drug to ensure that the child visited the prescribing physician at least once every 90 days. The physician would monitor the side effects of the medication and determine whether it was helping the child achieve the physician's treatment goals and whether continued use of the drug was appropriate.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 838 would ensure that a foster child's reaction to and progress on medication did not go unnoticed or was not misinterpreted by an untrained person. Health care professionals are required by DFPS policy to evaluate the effectiveness of psychotropic medications quarterly, but they are not required to visit with the child before making an evaluation. HB 838 would provide youth and their advocates an opportunity for meaningful involvement in their medical decisions and would reduce the risk of overmedication by requiring physician visits every 90 days.

The bill would not preclude foster children from meeting with their physicians more often than every 90 days if needed and, under DFPS policy, would allow telemedicine and video-call office visits to ensure children in rural areas had access to physicians.

HB 838 would not require children to meet with the same prescribing physician each visit because foster children change placements often and realistically might not be able to travel to see the same physician each time. However, each prescribing physician could access the foster child's previous health information electronically through the Health Passport program to ensure continuity between physician visits.

Under DFPS policy, the physician still would consider the treatment goals of the child and the child's advocates when making an evaluation, as specified in the child's service plan.

OPPONENTS SAY:

While HB 838 would set minimum standards for prescription monitoring, the bill would not go far enough. Requiring physician visits at least every 90 days is a minimum standard, but foster children could benefit from meeting more often with the same prescribing physician each time.

The bill should specify that an "office visit" did not preclude telemedicine

video calls. This would remove the burden for children in rural areas who might have difficulty meeting with a prescribing physician in person while ensuring that the prescribing physician saw the child before making an evaluation.

The bill also should clarify that the physician’s evaluation was required to take into account the treatment goals of the child and the child's advocates, which might differ from the physician’s treatment goals.

SUBJECT: Governor retaining authority when outside of state

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira

0 nays

3 absent — Hilderbran, Smithee, Sylvester Turner

WITNESSES: For — Tom Smith, Public Citizen

Against — None

On — (*Registered, but did not testify*: Christopher Burnett, Office of the Governor; Nim Kidd, Department of Public Safety)

BACKGROUND: The Emergency Interim Executive Succession Act sets out the line of succession, whether temporary or permanent, for the exercise of the powers and duties of the office of the governor. Under this law, the next in the line of succession may exercise the governor's powers only if the preceding officer is "unavailable." Government Code, sec. 401.022 defines "unavailable" as unable to exercise the governor's powers and duties for any reason specified in the Texas Constitution.

DIGEST: HB 829 would add to the definition of "unavailable" three situations when the governor or a person authorized to act as governor was no longer able to exercise the powers and duties of the office, including:

- being located outside of the territorial boundaries of the contiguous 48 states of the continental United States;
- providing notice that he or she would not rely on electronic communication while out of the state but within the continental United States; or
- being outside of the state for more than seven consecutive days.

The bill would add Government Code, sec. 401.0225 to require the governor or person authorized to act as governor to reasonably notify the

person next in the line of succession if he or she were unavailable as defined in HB 829.

The bill would amend Government Code, sec. 401.025 to remove the requirement that, in order to act as governor, the president pro tempore of the Senate have held the office at the time the governor or lieutenant governor first became unavailable.

This bill would take effect on the date HJR 71 was approved by voters. If the constitutional amendment were not enacted, the bill would have no effect.

SUPPORTERS SAY:

HB 829 would clarify succession of power in statute, as well as in the Constitution, by defining the circumstances under which the governor was "unavailable." Today, with the instantaneous ability to communicate, the governor should be able to take advantage of these technologies and exercise elected authority while outside the state. The governor would be able to exercise the authority of the office for seven days while outside of Texas as long as the governor notified the lieutenant governor and stayed within the contiguous United States.

HB 829 would reduce confusion if succession should have to occur. Some statutes are written to effectively require the governor's presence in the state to be able to issue certain orders. For example, the bill would allow the governor to call on the Federal Emergency Management Authority in the event of a natural disaster even if the governor were out of the state.

The bill also would improve the notification process by requiring the governor to notify the lieutenant governor if the governor became unavailable.

The bill would not reduce transparency in the order of succession. The author plans to offer an amendment that would strike the provision in the bill removing the requirement in current law that, in order to act as governor, the president pro tempore of the Senate be in office at the time the governor or lieutenant governor first became unavailable.

OPPONENTS SAY:

HB 829 inappropriately would allow the governor to exercise authority while outside of the state. Despite the widespread availability of new communications technologies, there are times when the governor is more effective when physically in Texas and needs to be in the state to execute

the duties of the office.

OTHER OPPONENTS SAY:

HB 829 would reduce the transparency of succession by removing the requirement in current law that, in order to act as governor, the Senate president pro tempore be in that office at the time the governor or lieutenant governor first became unavailable.

NOTES:

The companion bill, SB 292 by Huffman, was reported favorably by the Senate Committee on State Affairs on March 26. SB 292 differs from HB 829 in that it does not include the provision that removes the requirement in current law that, in order to act as governor, the president pro tempore of the Senate have held the office at the time the governor or lieutenant governor first became unavailable.